THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, the 5th day of June,2007

W.P.No.24154 of 1997

Between:-

Ch. Sukumar … Petitioner

and

Osmania University, rep. by its
Registrar, Hyderabad & another …
Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.24154 of 1997

ORDER:

This Writ Petition is filed seeking a Certiorari to quash the Order of the 1st respondent in Proceedings No.6201/239/108/66/Estt.I/Legal Cell, dated 24-7-1997 as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India and consequently to direct the respondents to reinstate the petitioner into service with all consequential and incidental benefits.

According to the petitioner, he entered the service of the respondent-University as officiating Assistant Store Keeper with effect from 27-4-1967. He was subsequently redesignated as Store Keeper Grade III in the year 1980. His entire service from the year 1967 had been satisfactory and there were no adverse remarks or penalties in his long service of 30 years. The general stores of respondent-University functions under the control and supervision of the University Engineer, under whom the technical staff and Store Keepers work. The University Engineer was being drafted from the cadre of Divisional Engineer in the Public Works Department. In the year 1979, University had one Y.Veera Reddy as its Engineer. The University Engineer was in complete charge of all civil works in the University. One Siddique, Store Keeper Grade II, who directly worked under the control of University Engineer, was Incharge of the entire store material including cement and steel. While so, Siddique was superannuated and retired from service with effect from 31-3-1979 and one Rajachary, U.D.C. was

directed to take charge from Siddique and relieve him. Siddique was specifically directed to hand over charge of Stores to Rajachary, but he did not do so. The University Engineer appointed Siddique on daily wage basis from 1-4-1979 itself, without the approval and knowledge of the competent Authority. Further, the University Engineer kept Siddique, the daily wage employee, to be in physical custody of Stores and also to attend to physical receipts and issues of store material. The University Engineer directed the regular Store Keeper to look after paper work relating to the Stores, such as, signing indents, invoices, forms, monthly returns etc., though the daily wage employee should not deal with official papers. Veera Reddy, University Engineer, for the reasons best known to him, continued Siddique and thus the physical custody of the stores was never handed over to any other regular employee. While Rajachary, UDC, insisted the University Engineer to order Siddique to handover the physical stores material with reference to the ledger balances, the University Engineer shifted Rajachary conveniently and the petitioner was posted in the place of Rajachary. Petitioner is the lowest designated employee in the cadre of Store Keeper Grade III in the hierarchy of the University. Petitioner had apprehension at the time of taking over charge that the University Engineer would play with his life and he fell into his clutches. Before posting into the Stores section in place of Rajachary, the petitioner was in the Divisional Office looking after house allotment section. He was posted to Stores section with effect from 1-6-1979. Petitioner was directed to take over the charge of Stores from Rajachary and relieve him. Rajachary could not hand over charge of physical stock of stores to the petitioner as Siddique did not hand over the charge to him. While that being so, Siddique took his own time to hand over physical possession of stores to the petitioner. It appears, there was an audit in

January,1982 by the Audit party of Accountant General's Office in the respondent-University. The visit of audit party sent shock waves to both Siddique and the University Engineer and they handed over the stock to the petitioner on 11-5-1982. First, Siddique handed over the stock of steel of different dimensions physically available to him in January,1982. At the time of handing over of physical stock of stores, only 105.839 MTs of steel was handed over by Siddique to the petitioner against the ledger balance of 140.759 MTs. Thus, there was a shortage of 34.920 MTs of steel in January,1982 itself. For this shortage, Siddique should be held responsible and he should account for it. The shortage of 34.930 MTs of steel comprised of the loan of 21.214 MTs given to M/s. Progressive Builders and for the shortage of remaining steel of 13.079 MTs, both Siddique and University Engineer-Veera Reddy should be held responsible. The same shortage i.e. 13.079 MTs is being reflected in the physical verification of stock made by the Deputy Executive Engineer (Stores) on 22-6-1982, which attracted the attention of A.G's party in June,1982. It is for this shortage, the University had initiated disciplinary proceedings against the petitioner, which culminated in the dismissal and recovery of Rs.1,70,000/-. The charges framed against the petitioner are :

1. That you were the Incharge of steel stores from 1-6-79, but you did not take regular charge as per rules. This irregular act on your part as against the departmental rules has become the basis for the shortage of steel to the extent of 13.079 MT.
2. That though Sri Md.Siddique who retired as Store Keeper II was asked to continue in the same job on daily wage basis looking after the work of issuing and receiving steel under the orders of the University Engineer, the papers of issue and receipt were signed by you testifying to the fact that you are solely responsible for the dealings. You are, therefore, charged with the sole responsibility for the shortage of the steel to the extent of 13.079 MT.
3. That at different times, you have issued on the orders of Sri Veera Reddy, University Engineer, steel of different dimensions to private contractors, namely, B.S. Reddy, M/s.Progressive Contractors, who were in no way connected with the construction work of the

University. You neither protested in writing against the illegal orders and corrupt practices of the University Engineer, nor you have brought to the notice of the University higher authorities. Therefore, you are charged as an accomplice, an abettor in the steel scam.

4. That when Sri Y. Veerareddy, University Engineer ordered you to receive the steel from private contractors M/s.Prabhu Steels and to get the material weighed at a place, namely, M/s.Prabhu Steels, Kukatpally, Hyderabad instead protesting against the illegal instructions and bringing the same to the notice of the University authorities, you acted as a willing accomplice in the illegal correct practice.
5. That in your deposition you had stated that the shortage of steel to the extent of 13.079 MT is due to non-availability of weighing machine and due to issue and receipt of steel through tape measurement. Whereas technically this contention is not tenable. Therefore, you are charged with misrepresentation of facts to circumvent your lapses.
6. That you are an accomplice and abettor in the illegal act of issuing steel to private contractors on loan basis.

According to the petitioner, the enquiry was not properly conducted and in fact, one-man commission was appointed and it gave a report holding that the University Engineer was definitely responsible to a greater extent, if not solely. Petitioner, in fact, has not at all responsible for any shortage and he, of course, acted to the dictates of the said Veera Reddy and Siddique. Even the Enquiry Officer noted that pending filling up of the post (Store Keeper) as per Rules, V.Rajachary was directed to take over additional charge of Store Keeper Grade II from Mohd. Siddique to relieve him on 31-3-1979. Siddique, who retired from service, with effect from 31-3-1979 was orally instructed by the then University Engineer to do all the transactions of steel physically. Though Rajachary was ordered to take over additional charge of Store Keeper Grade II, he was not given charge. Consequently, he did not give any charge to him. The strangest of the things is that Siddique, who appears to be a confident of the then University Engineer, was orally instructed to be Incharge of steel

transactions till 31-3-1982. Apart from this, neither Siddique nor Veera Reddy (University Engineer) was examined during the enquiry. Therefore, he cannot be said to be responsible for the shortage of steel and thus the enquiry conducted against him is vitiated and the finding that he is responsible for the shortage of steel is erroneous. Assuming that he made certain admission regarding maintenance of stocks and issue of receipts etc., that itself does not mean that he can be dismissed from service. Further, the punishment imposed is shockingly disproportionate to that of the misconduct alleged, particularly in the absence of any past misconduct to his credit.

Respondent No.1 filed a detailed counter affidavit denying the allegations made by the petitioner. It is asserted that the Engineer-in-Chief of Osmania University through letter dated 9-7-1992 informed the University that the Accountant General's Audit party has brought to the notice of the University Engineer that during the course of audit of the stocks, there was a shortage of steel also. One S.A.Kareem, Store Keeper Grade II was Incharge of the cement stock and the petitioner Store Keeper Grade III was Incharge of steel stock. Thereafter, the Board of Management constituted a committee to enquire into the matter. The committee conducted a detailed enquiry and found that persons' Incharge of Stores were responsible for the shortage of the steel to the extent of 13.049 M.Ts. This report of the committee was placed before the Board of Management, which appointed a fact finding Committee under the Chairmanship of Prof. P.Ethirajulu, Rector and Member of Board of Management. This committee also recommended punishment against S.A.Kareem, Store Keeper Grade III, S.K. Sultanuddin, Assistant Engineer and V. Raja Ram, the then University Engineer. The fact finding committee held that the petitioner is solely responsible for the shortage of 13.049 MTs of steel. On the basis of the

said report, the Vice Chancellor on 19-5-1995 ordered to initiate disciplinary action against the petitioner and others. The fact finding committee observed that under the circumstances mentioned, i.e. contradictory statements and tampering of records, it is not possible for it to fix responsibility precisely on any individual involving in these transactions. However, the involvement and responsibility of the concerned persons for the shortage of cement and steel has been established. Further, as per the decision of the Executive Council, show cause notices were issued to all the delinquent employees, who submitted their explanation. After considering the explanation, it was decided to impose the punishment of dismissal from service against the petitioner, in the public interest. No interference can be made by this Court with the impugned Order, under Article 226 of the Constitution of India.

Heard both sides.

It is not in dispute that one T.V.Narayana, Enquiry Officer has submitted a report stating as under:

> "…….There is a lot of force in the argument of Ch. Sukumar that the then University Engineer, Y. Veera Reddy was very powerful and sole authority. He, being an employee of lower cadre, could not restrain University Engineer for ordering issue of steel to private contractors….At the instructions of the then Univ.Engineer, Sri Ch.Sukumar signed all the documents i.e., receipt and indent forms….."

However, as the petitioner played into the hands of the University Engineer, he can also be said to be responsible to some extent. Further, it is an admitted fact that Siddique, who retired from the post of Store Keeper Gade II did not handover the charge either to the petitioner or to Rajachary, UD.C., who was posted in his place, till May,1982. The charge was handed over only when it was known to the University Engineer that the Accountant General's Office was conducting an audit

in the University in the month of January,1982. The audit party found out the shortage of cement and steel. The Enquiry Officer, who conducted enquiry into the matter in detail also held that the Engineer Incharge was solely responsible for the shortage that occurred in the Stores. In fact, petitioner has stated that 21.214 MTs of steel was lent to one Progressive Builders by the University Engineer and the instructions of the University Engineer, as a subordinate, he had to oblige. The shortage of steel, whatever was found out, admittedly, relates to the period even before the charge was handedover to the petitioner in the month of January,1982. Further, there is no direct evidence available in this regard. Petitioner claimed that he is innocent and it is the University Engineer (Y. Veera Reddy) and Store Keeper-Siddique, who was allowed to work beyond the retirement age, were responsible for the shortage, but both of them were not examined in the enquiry. The non-examination of these two persons in the case of the petitioner, when the petitioner made allegation that Siddique and Veera Reddy were responsible for shortage, was fatal. In the absence of this evidence, i.e., non-examination of the University Engineer and Siddique, absolutely, there was no material before the Enquiry Officer to find the petitioner guilty of the charge. Technically speaking, petitioner might have played into the hands of the Engineer, which he is not supposed to do so. But, that does not mean that the petitioner alone was responsible for the shortage of 13.049 MTs of steel, which had occurred before the charge was handed over to him by Siddique. Further, it is very interesting to notice that the dismissal order was given retrospective effect i.e. from the date of suspension of the petitioner (11-9-1992) which is *ab initio* illegal. No dismissal order can be given retrospective effect i.e. from the date of suspension of a delinquent Officer. That apart, it appears that the Enquiry Officer's report was

furnished to the petitioner along with the show cause notice of dismissal from service, which is not proper. The Enquiry Officer's report and other documents relied upon should have been furnished to the delinquent officer and permitted him to file any objections thereto. Such a course of action was not followed. It also appears that Prof. Ahmedullah Khan's report, which was called for by the Vice Chancellor and upon which a show cause notice was issued, was also not furnished to the petitioner.

Under the above circumstances, I am of the opinion that the respondents have not conducted the enquiry as per law and the findings recorded against the petitioner are not supported by any evidence. Even assuming that there is some misconduct on the part of the petitioner, the punishment of dismissal from service is shockingly disproportionate to that of the misconduct alleged against him.

In a case like this, generally speaking, the matter must go before the disciplinary authority for taking appropriate steps for conducting *de novo* enquiry or decision for the purpose of imposing a lesser punishment than that of dismissal from service. But, in this case, petitioner was aged about 52 years as on the date of filing of the Writ Petition and now it is more than 10 years. Petitioner crossed the age of superannuation in the meantime. Therefore, I deem it appropriate to give a quietus to this litigation, at this stage, by reducing the punishment of dismissal from service to that of compulsory retirement with effect from the date of the impugned Order i.e. 24-7-1997. It is needless to mention that the petitioner is entitled for all benefits as per law, including pension, gratuity, provident fund and other retiral benefits. The respondents shall settle the same within a period of three months from the date of receipt of a copy of this Order.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

05-6-2007

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